

fact that their constituents, their very own neighbors, are benefiting from health care reform.

This is a phony trial that will come up. It is a show trial. It is what Republicans want.

I guess that is what they want, but if that is truly what they want, they should go talk to Judge Judy. I think she would throw this case out in half a second. The Congress is no place for inane, politically motivated litigation. I think Judge Judy would agree.

It is expensive and wasteful. It is wasting taxpayers' hard-earned money on something that is without any merit. Enough is enough. The fight over ObamaCare should be long since ended. The law is here to stay and, more importantly, newly insured Americans, all who have signed up, not only those who are newly insured but those who have signed up who had insurance before, want the law to stay just where it is.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 6 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. REID. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BARRASSO. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

BAY NOMINATION

Mr. BARRASSO. Mr. President, I rise today to discuss the nomination of Norman Bay. President Obama has nominated Mr. Bay to be a commissioner of the Federal Energy Regulatory Commission, or FERC. The President has announced that if Mr. Bay is confirmed, his plan is to elevate Mr. Bay to the position of chairman of FERC. Over the past few months there has been much discussion about whether the President should have nominated Mr. Bay to be chairman, and I think there is very good reason to ask whether the President really should have nominated Mr. Bay at all.

In my view Mr. Bay is not qualified to be a commissioner, let alone to be chairman of FERC. Mr. Bay has only 5 years of working experience in the energy sector—a total of 5 years. This is less time than the Keystone XL Pipeline has been pending with the Obama administration.

During the nomination hearing, I specifically asked Mr. Bay about his lack of experience. In response, he cited his summer internship at a Department of Energy research facility during college—a summer internship during college. With all due respect, this man does not have the background, the qualifications, and certainly not the experience to take on this important role.

The President has nominated Mr. Bay to replace FERC's current chairman Cheryl LaFleur. In contrast to Mr. Bay, whom the President has nominated to replace Ms. LaFleur, Ms. LaFleur has over 25 years of experience in the energy sector. That includes 4 years as a commissioner of FERC and 7 months as the chairman of FERC. I don't often agree with Ms. LaFleur's policies, but you cannot deny that she is qualified to serve.

Mr. Bay's lack of experience is not the only reason I oppose his nomination. There are a number of outstanding factual disputes about Mr. Bay's tenure as the FERC's enforcement director. For example, there are serious allegations that the enforcement staff, during the time Mr. Bay has been in charge, has violated basic principles of due process. These allegations include the withholding of exculpatory evidence from subjects of FERC investigations.

In May the Energy Law Journal published an article by William Scherman, who was a former general counsel of FERC and by two other attorneys familiar with this situation, and they write: "There is a wide-spread view that the FERC enforcement process has become lop-sided and unfair."

They said that:

One need only to observe the fact that Enforcement Staff denies, in case after case, the existence of exculpatory or exonerating materials . . . only to . . . produce a subset of those materials too late in the process to be of use . . . in raising defenses.

The authors explain that "one of the fundamental principles of due process is that the government is not permitted to hide information from the accused that may aid in his or her defense." They say that "[FERC] Enforcement Staff routinely fails to produce exculpatory documents"—routinely fails to produce exculpatory documents.

During Mr. Bay's nominating hearing, I asked him about these allegations. At first he denied the allegations were true, but then he stated he was "not aware of any instance in which Enforcement Staff has failed to produce exculpatory materials."

So I asked him to clarify his remarks. I asked him whether the allegations were true or not. He pled ignorance.

With all due respect, this answer is inexcusable. This is his staff doing his work under his direction. He should know whether they withheld the evidence from defendants.

There are not only questions about his commitment to due process, but

there are also questions about the President's nominee on whether he or anyone else at FERC suggested that an enforcement action be settled in return for approval of a merger. So there are questions about whether an enforcement action should be settled in return for approving a merger.

The ranking member of the energy committee asked all about this during the nomination hearing. The ranking member of the committee asked Mr. Bay about the connection between FERC's enforcement settlement with Constellation Energy and FERC's approval of Constellation's merger with Exelon.

The ranking member noted that FERC settled with Constellation the day before—1 day before it approved a merger between Constellation and Exelon. In fact, the enforcement settlement, which Mr. Bay himself signed, specifically mentions the merger between these two. The ranking member of the Energy Committee asked Mr. Bay whether he is concerned about the appearance of a quid pro quo between the settlement agreement one day and the merger approval the next. Mr. Bay admitted he would be concerned.

The ranking member then asked if he or others suggested to FERC that Constellation should settle the enforcement action in order to get its merger approved. In response he said that "[t]o the best of [his] recollection" he didn't make such a suggestion and that he did not know what others at FERC—including his own staff—may have suggested.

With all due respect to Mr. Bay, his answer is, at best, hard to believe.

At the time FERC's enforcement settlement with Constellation was the largest enforcement settlement completed in the history of the agency. So they make this settlement, it is the largest enforcement settlement in the agency's history, and the next day they allow a merger which has created one of the Nation's largest utilities. Are we really to believe that Mr. Bay doesn't remember what he or others at FERC said to Constellation? Can we really believe that?

I believe the energy committee or some other independent entity should get answers to these and other questions surrounding Mr. Bay's record before we decide—this Senate—to confirm and promote him.

I know that some Senate Democrats are nervous about voting for Mr. Bay—and I believe rightfully so. These Senate Democrats have said they will vote for Mr. Bay only because they believe a so-called deal was cut with President Obama. Specifically, they say the President will allow Ms. LaFleur to continue serving as chairman for 9 months after her confirmation.

The President hasn't put it in writing, hasn't really told all of the Members that. And even if the President had, this is no way for the Senate to be able to enforce it. The truth is this is